

MICHIGAN SUPREME COURT



Office of Public Information

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FOR IMMEDIATE RELEASE

HIGH COURT TO HEAR CHALLENGE TO WAYNE COUNTY'S TAKING OF PRIVATE PROPERTY; POLETOWN PRECEDENT AT ISSUE

LANSING, MI, April 19, 2004 -- The Michigan Supreme Court will hear oral arguments this week in cases involving Wayne County's proposed taking of private property for a public use.

In *County of Wayne v. Hathcock, et al.*, the Supreme Court is asked to decide whether proposed takings of private property by Wayne County are for a "public use" where the land will ultimately be sold to private entities for a development project. The Wayne County Circuit Court, relying on *Poletown Neighborhood Council v. Detroit*, 410 Mich 616 (1981), has ruled that the taking is permitted under the Michigan Constitution.

The other cases the Supreme Court will hear involve criminal, insurance, employment, fraud, worker's compensation, medical malpractice, and contract law issues.

Court will be held on **April 20 and 21**. Court will convene at **9:30 a.m.** each day.

(Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys. Briefs in these cases may be viewed on the Michigan Supreme Court's website at http://courts.michigan.gov/supremecourt/Clerk/msc_orals.htm.)

Tuesday, April 20
Morning Session

PEOPLE v. HICKMAN (case no. 122548)

Prosecuting attorney: J. Thomas Horiszny/(989) 790-5330

Attorney for defendant Jonathan D. Hickman: Lyle N. Marshall/(517) 334-6069

Trial court: Saginaw County Circuit Court

At issue: Where a suspect is arrested a short time after a crime has occurred and is identified by the victim at the scene of the crime, can that identification be admitted into evidence at trial, or must the suspect be taken to the police station, provided with counsel, and placed in a lineup?

Background: A short time after a robbery occurred, defendant Jonathan D. Hickman was arrested, handcuffed, and placed in the police cruiser. He was driven to the scene of the crime where the victim identified him. At trial, Hickman's counsel moved to suppress the identification. The Saginaw County Circuit Court denied the motion, and Hickman was convicted of armed robbery, conspiracy, and possession of a firearm during the commission of a felony. The Court of Appeals affirmed the convictions in an unpublished per curiam opinion. Hickman appeals.

C.C. MID WEST, INC. v. MCDOUGALL, et al. (case no. 123237)

Attorney for plaintiff C.C. Mid West, Inc.: Michael F. Smith/(248) 258-1616

Attorney for defendants Howard McDougall, Robert J. Baker, Arthur H. Bunte, Jr., R.V. Pulliam, Sr., Joe Orrie, Jerry Younger, George J. Westley, Ray Cash, and Ronald J. Kubalanza: Stephen F. Wasinger/(248) 414-9900

Trial court: Oakland County Circuit Court

At issue: Does the federal Employee Retirement Income Security Act of 1974 (ERISA) preempt Michigan's common law of tortious interference with contract and business expectancy? Specifically, do the claims "relate to" an employee benefit plan?

Background: Plaintiff, a nonunion trucking company, sued the defendants, who are Teamsters pension fund officials, for interference with its contractual relations and with a business expectancy. The suit was based on letters that the pension fund officials had sent to pension fund participants, telling them that they would not be able to continue to make contributions to the fund if they worked for plaintiff. The Oakland County Circuit Court ruled that it did not have jurisdiction because of the federal Employee Retirement Income Security Act of 1974 (ERISA). In an unpublished per curiam opinion, the Court of Appeals affirmed, concluding that plaintiff's claims are preempted by ERISA. The plaintiff appeals, contending that its case should be allowed to proceed.

KREINER v. FISCHER (case no. 124120)

Attorney for plaintiff Richard Adam Kreiner: Terry L. Cochran/(734) 425-2400

Attorney for defendant Robert Oakland Fischer: Daniel S. Saylor/(313) 446-5520

Attorney for amicus curiae Auto Club Insurance Association: Mary T. Nemeth/(313) 963-8200

Attorneys for amicus curiae Coalition Protecting Auto No Fault: Kevin J. Moody, Jaclyn Shoshana Levine/(517) 487-2070

Trial court: Lapeer County Circuit Court

At issue: When a person is injured in an automobile accident, under the no-fault insurance law how serious must the injuries be for the person to recover noneconomic damages? What constitutes a "serious impairment of body function" under the no-fault act?

Background: Richard Adam Kreiner was in an automobile accident that left him with complaints of pain in his low back, right hip, and right leg. From time-to-time Kreiner has taken pain medication and has undergone physical therapy, but he was not hospitalized and he has not undergone surgery. Kreiner is a self-employed construction worker. He claims that his injuries limit him to a 6-hour work day rather than the 8-hour day he worked in the past, that he is now limited as to how long he can stand on a ladder, and that now he can only carry 80 pounds. However, his income increased in the year after his injuries. Kreiner also claims some limitations on his nonwork activities. For example, he can hunt deer from a blind, but can't hunt

rabbits. The no-fault act allows for “noneconomic” damages when a person suffers “death, serious impairment of body function, or permanent serious disfigurement.” This case involves a “serious impairment” claim. That phrase is defined as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” The lower courts have disagreed about whether Kreiner’s injuries meet that standard. The Lapeer County Circuit Court concluded that Kreiner’s injuries were not serious enough, but the Court of Appeals ruled that they were in a published opinion. The defendant appeals. The Supreme Court granted leave to appeal to consider whether Kreiner’s injuries are serious enough for him to receive noneconomic damages.

STRAUB v. COLLETTE, et al. (case no. 124757)

Attorney for plaintiff Daniel Lee Straub: Dondi R. Vesperini/(248) 901-3400

Attorney for defendants Phillip Michael Collette and Teresa M. Heil-Wylie: Curtis R. Hadley/(517) 351-6200

Attorney for amicus curiae Insurance Institute of Michigan: Mary T. Nemeth/(313) 963-8200

Trial court: Monroe County Circuit Court

At issue: Under Michigan’s no-fault insurance laws, how serious must the injuries be for a person involved in an automobile accident to recover noneconomic damages? What constitutes a “serious impairment of body function” under the no-fault act, and how long must a person’s general ability to lead his normal life be disrupted in order to recover noneconomic damages?

Background: Daniel Lee Straub was driving his motorcycle when he collided with a car owned by the defendants. He suffered a “boxer’s fracture” in his neck, and received wounds on a few fingers. At the time of the accident, Straub was employed as a lineman for a cable television company, and he played bass guitar in a band on weekends. Straub underwent outpatient surgery, received some physical therapy, and wore a cast for a short time. He returned to work approximately two months after the accident, but initially could not use his left hand. After a month of work, he was released for unrestricted duty. Straub claims that it was another month or so before his finger was strong enough to play bass guitar for his band. He also claims he had difficulty doing yard work and household chores, and that he was unable to process deer during the 1999 deer hunting season. The no-fault act allows for “noneconomic” damages (damages that do not reimburse a party for out-of-pocket expenses or wage losses) when a person suffers “death, serious impairment of body function, or permanent serious disfigurement.” The question here is whether Straub suffered a serious impairment of a body function that affected his general ability to lead his normal life. The Monroe County Circuit Court concluded that Straub’s injuries did not meet the statutory threshold and ruled against him, but the Court of Appeals reversed in a published opinion. The defendants appeal. The Supreme Court granted leave to appeal to consider whether Straub’s injuries are serious enough that he can recover noneconomic damages.

Afternoon Session

SANCHEZ & VAZQUEZ v. EAGLE ALLOY, INC. & SECOND INJURY FUND (case nos. 123114-15)

Attorney for plaintiff David Sanchez: Gary T. Neal/(231) 726-4861

Attorney for plaintiff Alejandro Vazquez: John A. Braden/(231) 830-9190

Attorney for defendant Eagle Alloy, Inc.: Thomas H. Cypher/(616) 774-2131

Attorney for defendant Second Injury Fund: Victoria A. Keating/(313) 456-0080

Attorney for amicus curiae Michigan Migrant Legal Assistance Project, Inc., the National Employment Law Project, West View Orchards & Cider Mill of Romeo, and Zylstra Greenhouse: Teresa M. Hendricks/(616) 454-5055

Attorney for amicus curiae Michigan Self-Insurers' Association: Gerald M. Marcinkoski/(248) 433-1414

Trial court: Worker's Compensation Appellate Commission

At issue: How does plaintiffs' status as undocumented aliens affect their entitlement to worker's compensation benefits for work-related injuries? In part the issue turns on the definition of "employee" under the worker's disability compensation act.

Background: Daniel Sanchez and Alejandro Vazquez entered the country illegally and obtained work with the defendant-employer through the use of fake social security cards and other false identification. They also falsified answers about their legal status on their employment applications. Both men were injured at work. Sanchez's hand was crushed and burned in a press accident; Vazquez suffered a joint separation in his shoulder while lifting a heavy metal part. Sanchez and Vazquez were awarded various workers compensation benefits, and both parties appealed to the Court of Appeals. In a published opinion, the Court of Appeals held that benefits could be awarded, but that they must be suspended once the employer obtains confirmation of the plaintiffs legal status. The plaintiffs appeal.

ESTATE OF SHINHOLSTER v. ANNAPOLIS HOSPITAL, et al. (case nos. 123720-21)

Attorney for plaintiff Johnnie E. Shinholster, Personal Representative of Estate of Betty Jean Shinholster, Deceased: Mark Granzotto/(248) 546-4649

Attorney for defendant Annapolis Hospital, assumed name for Oakwood United Hospitals, Inc.: Linda M. Garbarino/(313) 964-6300

Attorney for defendants Katherine Adams, Personal Representative of the Estate of Dennis Adams, M.D., and Mary Ellen Flaherty, M.D.: Graham K. Crabtree/(517) 482-5800

Attorney for amicus curiae Ford Motor Company: Robert W. Powell/(313) 621-6402

Attorneys for amicus curiae Michigan State Medical Society: Joanne Geha Swanson, Richard D. Weber/(313) 961-0200

Trial court: Wayne County Circuit Court

At issue: Did the trial court properly apply the "cap" on noneconomic damages in medical malpractice cases provided by MCL 600.1483(1)? Can a jury consider the negligence of a patient in causing the condition that leads to seeking treatment? Should future damages have been reduced to present value?

Background: The plaintiff brought this medical malpractice case, claiming that the defendants failed to recognize that the deceased, Betty Jean Shinholster, had suffered a series of "mini-strokes" that often precede a serious stroke. Shinholster later suffered a massive stroke and died after several months in a coma. Her estate received a substantial verdict in the malpractice case. The defendants appealed, but the Court of Appeals affirmed in a published opinion. The Court of Appeals rejected defendants' arguments that they should have been allowed to show that the deceased patient was negligent in creating the condition that led to her seeking treatment. The Court of Appeals also concluded that the trial court properly applied the statutory "cap" on noneconomic damages, and that it correctly refused to reduce future damages to present value. The defendants appeal.

JENKINS v. PATEL, et al. (case no. 123957)

Attorney for plaintiff Margaret Jenkins, Personal Representative of the Estate of Mattie Howard, Deceased: Ira B. Saperstein/(248) 357-3050

Attorney for defendants Jayesh Kumar Patel, M.D., and Comprehensive Health Services, Inc., a Michigan Corporation, d/b/a The Wellness Plan, Jointly and Severally: Susan Healy Zitterman/(313) 965-7905

Attorney for amicus curiae Linda A. Watters, Commissioner of the Office of Insurance and Financial Services and Rehabilitator of the Wellness Plan: Michael J. Fraleigh/(517) 373-1160

Attorneys for amicus curiae Michigan State Medical Society: Joanne Geha Swanson, Richard D. Weber/(313) 961-0200

Attorney for amicus curiae ProNational Insurance Company and Michigan Health and Hospital Association: Graham K. Crabtree/(517) 482-5800

Trial court: Wayne County Circuit Court

At issue: Does the “cap” on noneconomic damages in medical malpractice cases provided by MCL 600.1483(1) apply in cases involving wrongful death claims?

Background: The plaintiff brought this medical malpractice case seeking to recover damages for the death of her mother, Mattie Howard. The plaintiff claimed that the defendants mismanaged Howard’s renal disease and hypertension, resulting in her death. The jury awarded \$10 million to the plaintiff. The defendants appealed, arguing that the damages should have been limited by the statutory “cap” on noneconomic damages. In a published opinion, the Court of Appeals held that the cap does not apply in medical malpractice cases involving wrongful death claims. The Court of Appeals also directed that the trial court reduce the amount of damages, finding that the jury verdict was excessive. The defendants appeal.

ALIBRI v. DETROIT WAYNE COUNTY STADIUM AUTHORITY (case no. 123091)

Attorney for plaintiff Freda Alibri: Joseph M. Rogowski II/(313) 225-7000

Attorney for defendant Detroit Wayne County Stadium Authority: Avery K. Williams/(313) 963-3873

Attorneys for amicus curiae Institute for Justice: John Ceci/(517) 546-4864, Dana Berliner/(202) 955-1300

Trial court: Wayne County Circuit Court

At issue: Did the trial court properly set aside an option contract under which the Detroit Wayne County Stadium Authority purchased plaintiffs’ land?

Background: Freda Alibri claims that when she and the Detroit Wayne County Stadium Authority were negotiating about the sale of her property for stadium parking, the Stadium Authority told Alibri that if the purchase negotiations were unsuccessful, it would use its condemnation power to take the property. The parties entered into an option contract in which Alibri agreed to sell the property for \$268,498. The Stadium Authority exercised the option purchasing the property with money borrowed from the Detroit Tigers. When the stadium project was scaled back and Alibri’s property was no longer needed, the Stadium Authority repaid the loan by transferring the property to the Tigers.

Alibri sued the Stadium Authority, asking to have the option contract rescinded or set aside. The Wayne County Circuit Court ruled in Alibri’s favor, finding that there had been a failure of consideration, mutual mistakes of fact, and innocent misrepresentations. The court

also found that as a result of the Stadium Authority's representations regarding its ability to condemn the property, Alibri had agreed to sell the property at below market value. The Court of Appeals reversed in a published opinion, holding that none of the Alibri's four contract theories justified rescission of the contract. Alibri appeals.

Wednesday, April 21
Morning Session

GERLING KONZERN ALLGEMEINE VERSICHERUNGS AG v. LAWSON, et al., (case no. 122938)

Attorney for plaintiff Gerling Konzern Allgemeine Versicherungs Ag, Subrogee of the University of Michigan Regents: Michael T. Reinholm/(248) 433-1414

Attorney for defendants Cecil R. Lawson and American Beauty Turf Nurseries, Inc.: Gary W. Caravas/(586) 791-7046

Trial court: Washtenaw County Circuit Court

At issue: Historically, when the actions of two or more persons jointly caused an injury, each of them could be held liable for the full amount of the damages. But where one of them paid the damages, that party could seek reimbursement for part of the cost from the others. The issue in this case is whether the 1995 tort reform legislation, MCL 600.2925a, 600.2957(1), and 600.6304, which eliminated such joint liability, also eliminated the right to seek contribution from the others who caused the injury.

Background: This case arises out of a three-way auto accident involving a vehicle owned by the University of Michigan Regents and driven by its employee; a semi-truck driven by defendant Cecil R. Lawson and owned by defendant American Beauty Turf Nurseries, Inc.; and a third vehicle containing Ricki Ash and James Nicastrì, who were seriously injured. Ash and Nicastrì sued the University and the cases were settled. Plaintiff Gerling Konzern Allgemeine Versicherungs AG, the University's insurer which paid the settlements, then brought this action against Lawson and his employer, claiming that the University had paid more than its share of their common liability. In a published per curiam opinion, the Court of Appeals held that such claims for contribution are no longer available after enactment of tort reform legislation in 1995. The plaintiff appeals.

COUNTY OF WAYNE v. HATHCOCK, et al. (case nos. 124070-78)

Attorney for plaintiff County of Wayne: Mark Zausmer/(248) 851-4111

Attorneys for defendant Edward Hathcock: Alan T. Ackerman/(248) 537-1155, Mary Massaron Ross/(313)983-4801

Attorney for defendants Aaron T. Speck and Donald E. Speck: Martin N. Fealk/(313) 381-9000

Attorneys for amicus curiae Adell Childrens Funded Trusts: H. Adam Cohen, Jason C. Long/(248) 356-5888

Attorney for amicus curiae City of Dearborn: Thomas J. McCarthy/(248) 642-5770

Attorney for amicus curiae City of Detroit: Avery K. Williams/(313) 963-3873

Attorneys for amicus curiae Economic Development Corporation of the City of Detroit, City of Detroit Downtown Development Authority and the Michigan Downtown and

Financing Association: Susan D. Hoffman, David Baker Lewis, Brian J. Kott, Darice E. Weber/(313) 961-2550

Attorneys for amicus curiae Institute for Justice and Mackinac Center for Public Policy: John Ceci/(517) 546-4864, Dana Berliner/(202) 955-1300, Ilya Somin/(703) 993-8069

Attorneys for amicus curiae Michigan Municipal League: Thomas C. Phillips, Clifford T. Flood, Jaclyn Shoshana Levine/(517) 487-2070

Attorneys for amicus curiae Pacific Legal Foundation and ACLU Fund of Michigan: Marc K. Shaye/(248) 851-1936, Kary L. Moss, Michael J. Steinberg/(313) 578-6800

Attorney for amicus curiae Ronald Reosti, Ralph Nader and Alan Hirsch: Ronald Reosti/(313) 962-2770

Attorneys for amicus curiae Public Corporation Law Section of the State Bar of Michigan: Gerald A. Fisher, Thomas R. Schultz/(248) 851-9500

Attorney for amicus curiae International Council of Shopping Centers, Inc.: Stephon B. Bagne/(248) 357-0000

Trial court: Wayne County Circuit Court

At issue: The Michigan Constitution allows the government to take private property by payment of just compensation, if the taking is for a “public use.” These nine cases raise a number of questions regarding proposed takings of private property by Wayne County, focusing on whether the taking are for a public use or purpose. Specifically, is a large economic development project a public purpose? And is it a public purpose if the taken property is ultimately to be sold to private entities that are part of the planned development?

Background: Wayne County is assembling a large tract of land, about 1,300 acres, near Detroit Metropolitan Airport for the purpose of developing a major commercial, industrial and hotel project. The county hopes the project will create thousands of jobs and yield millions of dollars in tax revenue. The county has obtained all but about 2 percent of the land it seeks. These cases involve the nine land owners who own the remaining 2 percent and do not wish to sell to the county. The land owners argued that taking their land would not be for a public purpose, partly because the property would later be sold to private entities. The Wayne County Circuit Court ruled in favor of the county, relying on *Poletown Neighborhood Council v Detroit*, 410 Mich 616 (1981), a case decided more than 20 years ago that allowed Detroit to take land to be used for an automobile manufacturing plant. The Court of Appeals agreed with the circuit court, but two Court of Appeals judges questioned the *Poletown* decision. The defendants appeal. The Supreme Court will consider, among other things, whether these cases involve takings for a public purpose. If so, the land owners can be forced to sell their land to the county for just compensation. In deciding these cases, the Supreme Court will have an opportunity to reconsider the issues decided in *Poletown*.

PEOPLE v. BARBEE (case no. 123491)

Prosecuting attorney: Robert A. Cooney/(231) 922-4600

Attorneys for defendant Edmund McGehee Barbee: Anne Yantus, Jacqueline J. McCann/(313) 256-9833

Attorneys for amicus curiae Prosecuting Attorneys Association of Michigan: William M. Worden, Hope E. Freeman/(517) 543-7500

Trial court: Grand Traverse County Circuit Court

At issue: Under the Legislative Sentencing Guidelines, trial courts “score” various factors regarding the circumstances of the crime and the background of the defendant in determining the

appropriate minimum sentence. The issue in this case is whether the trial court improperly scored points for interference with administration of justice where defendant gave a false name and false identification when stopped for a traffic violation.

Background: Edmund McGehee Barbee gave police officers false identification and his brother's name when he was pulled over for erratic driving and defective equipment. He later pled guilty to drunk driving, and the Grand Traverse County Circuit Court imposed a 29 to 60 month sentence. Barbee moved for resentencing. He claimed that in scoring the Sentencing Guidelines, he should not have been given points for Offense Variable 19 — interference with the administration of justice — because officers eventually would have discovered his true identity. The Grand Traverse County Circuit Court denied resentencing, and the Court of Appeals denied Barbee's application for leave to appeal. Barbee appeals.

Afternoon Session

HAAS, et al. v. DEAL, et al. (case no.123144)

Attorney for plaintiffs Elaine A. Haas and Charles J. Bannon: Laurie S. Longo/(734) 913-5619

Attorney for defendants Wade H. Deal, Sarah J. Deal, Tracey L. Deal and J.A. Delaney & Co.: Gail P. Massad/(734) 261-2400

Trial court: Wayne County Circuit Court

At issue: The Supreme Court granted leave to consider whether a fraud claimant's reliance on an alleged misrepresentation must be reasonable and whether a fraud claim must be proved by clear and convincing evidence.

Background: Plaintiffs purchased a home on a 2.66-acre wooded lot. An adjacent parcel was owned by a nearby cemetery, which planned to expand into it. Plaintiffs sued the sellers of the property and the realtors who handled the transaction, claiming that they were misled into buying the property by defendants' false and misleading statements about the ownership of the adjacent parcel. Defendants claim that plaintiffs' failure to investigate the public record about such matters was fatal to their fraud and innocent representation theories of relief against defendant-sellers. The Wayne County Circuit Court ruled for the defendants, but the Court of Appeals partially reversed that decision, concluding that the case could proceed on some of the plaintiffs' theories. Both sides appeal.

PEOPLE v. MORSON (case no. 124083)

Prosecuting attorney: Danielle DeJong/(248) 858-0656

Attorney for defendant Latasha Genise Morson: Gary L. Rogers/(313) 256-9833

Trial court: Oakland County Circuit Court

At issue: Under the Legislative Sentencing Guidelines, trial courts "score" various factors regarding the circumstances of the crime and the background of the defendant in determining the appropriate minimum sentence. In this case, the Supreme Court will consider a variety of issues regarding the application of the Sentencing Guidelines focusing on situations involving more than one offender and more than one victim, and the standard of proof when scoring is based on the actions of someone other than the defendant.

Background: Latasha Genise Morson and her co-defendant agreed to steal an older woman's purse, and Morson gave the co-defendant a gun to use in the crime. The co-defendant fled after robbing the woman and shot a witness who pursued her. Morson was convicted of conspiracy to

commit armed robbery, armed robbery, and of possession of a firearm during commission of a felony. She was not charged with any offenses as the result of the shooting. In imposing 8 to 30-year terms for the robbery and conspiracy convictions, the Oakland County Circuit Court scored three Sentencing Guidelines offense variables pertaining to the shooting. The Court of Appeals agreed that the variables should be scored, but remanded the case to the trial court so that the same scores could be assessed for defendant and her co-defendant and for resentencing. The prosecution appeals.

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